

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL JOSEPH SIMS,

Petitioner,

VS.

ROBERT HOUSTON,

Respondent.

Case No. 4:07CV3088

# MEMORANDUM AND ORDER

This habeas corpus case was the subject of initial review in April and May of 2007. (*See* filing 3 and 8.) The parties require further direction.

Pending before me is a motion for stay and abeyance and memorandum and brief (filing 15) submitted by the petitioner and an objection (filing 16) submitted by the respondent. I agree with the respondent that the motion for stay and abeyance is, at best, premature. I will therefore deny it without prejudice.

I also note that the petitioner has filed a “supplement” regarding his petition. (Filing 10.) He did not have leave to do so, but the answer (filing 12) appears to regard the petition as having been amended by the supplement and so I will allow the amendment as made.

Inasmuch as the answer (filing 12) and the state court records (filing 13) have been submitted, the case should now be progressed. Accordingly,

IT IS ORDERED that:

1. The petitioner's motion (filing 15) for stay and abeyance is denied without prejudice.

2. The supplement to petition (filing 10), treated as a motion for leave to amend, is granted, and the petition (filing 1) shall be considered amended by the supplement (filing 10).
3. The petitioner's request for appointment of counsel (filing 1 ¶ 24) is denied without prejudice.
4. The following progression schedule is imposed:
  - A. On or before September 24, 2007, the respondent shall file a brief on all matters germane to the case including, but not limited to, the merits of the petitioner's allegations, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. *See, e.g., Rules 5(b) and 9 of the Rules Governing Section 2254 Cases in the United States District Courts.*
  - B. No later than 30 days following the filing of the respondent's brief, the petitioner shall file and serve a responsive brief. The petitioner shall submit no other documents unless directed to do so by the court.
  - C. No later than 15 days after the filing of the petitioner's brief, the respondent shall file and serve a reply brief.
  - D. At the conclusion of the foregoing, the case will be ripe for decision.

5. No discovery shall be undertaken without leave of the court. *See* Rule 6 of the *Rules Governing Section 2254 Cases in the United States District Courts*.
6. The Clerk of the Court is directed to set a pro se case management deadline in this case using the following text: “Case ripe for decision on or about November 12, 2007.”

August 10, 2007.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge